

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TERRY LYNN BESS,

Petitioner,

v.

NATHANIEL QUARTERMAN,

Respondent.

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CIVIL ACTION NO. H-07-0691

ORDER

Petitioner filed a habeas proceeding under 28 U.S.C. § 2254 challenging his state felony conviction. By his own admission, he raises both exhausted (grounds 1 through 5) and unexhausted (grounds 6 and 7) claims. The unexhausted claims allege actual innocence and inadmissible trial evidence. In stating his reasons for failing to exhaust these two claims, petitioner asserts that “It could not have been formulated through exercise of due diligence of an amicus curial [sic].” This is insufficient to show justification or good cause for failing to exhaust state court remedies prior to filing the instant petition.

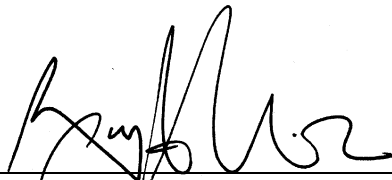
Petitioner presents a “mixed” petition of exhausted and unexhausted claims. In order to proceed in this Court, petitioner must either delete the unexhausted claims and proceed with the exhausted claims, or voluntarily dismiss his petition without prejudice to refiling all claims upon complete state exhaustion. *See Rhines v. Weber*, 544 U.S. 269, 278 (2005).

Accordingly, the Court **ORDERS** petitioner, on or before **APRIL 1, 2007**, either to (1) file an amended habeas petition deleting his unexhausted claims **OR** (2) file a voluntary dismissal of this habeas case in order to pursue exhaustion of the unexhausted claims in state court. Petitioner's failure to comply timely with this order may result in the dismissal of this lawsuit without further notice for failure to prosecute.

Petitioner's motion to proceed *in forma pauperis* in this habeas case (Docket Entry No. 2) is **GRANTED**.

The Clerk is to provide a copy of this order to all parties.

Signed at Houston, Texas on March 2, 2007.



Gray H. Miller
United States District Judge